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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,589	02/06/2006	Hiroaki Tamai	FUIJZ22.365(100794-01037)	2485
26304 7590 10/04/2010 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585				
EXAMINER				
BELANI, KISHIN G				
ART UNIT		PAPER NUMBER		
2443				
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10/04/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/567,589

**Applicant(s)**

TAMAI, HIROAKI

**Examiner**

KISHIN G. BELANI

**Art Unit**

2443

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 7-9 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-9 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG-08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This action is in response to Applicant's RCE filed on 06/30/2010. **Independent claims 1 and 8 have been amended. Claims 1, 2, 7-9 and 14 are now pending** in the present application. The applicant's amendments to claims are shown in ***bold and italics***, and the examiner's response to the amendments is shown in **bold** in this office action.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/30/2010 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 2, 7-9, and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mimura et al. (U.S. Patent Publication # 6,847,613 B2)** in view of **Wakayama et al. (U.S. Patent Application Publication # 2004/0136368 A1)**.

Consider **claim 1**, Mimura et al. show and disclose a statistic information extraction method (abstract that describes a method for observing a communication flow across a network, and a plurality of network switches that analyze the packet headers to determine whether the packets belong to a specified packet type, and if so, collect statistics data for the communication flow until the communication flow session has ended; Fig. 5 shows the details of the method), comprising:  
a first step of setting in a table a packet type (Fig. 1 that shows the details within a monitoring switch, including a flow table 4 that interfaces with a flow identifying unit 3 and a meter 5 used to measure predetermined items such as the number of packets meeting one of the conditions for communication flow identification and retaining statistics data obtained by monitoring; column 2, lines 21-27 teach that when an IP

packet arrives at the meter 5, the meter checks to see whether the IP packet matches any of the pre-registered communication flow conditions; column 4, lines 18-25 further disclose that when a sending-end packet switch receives an IP packet that belongs to a new communication flow (i.e. new IP packet), it identifies what type of the new IP packet it is and determines the monitoring method applied to the identified new IP packet and the items to be measured in accordance with a user policy), and a retrieval pattern which are selectable in accordance with a user policy (Fig. 7, flow identifier 75 that corresponds to a retrieval pattern and includes SIP (Source IP address), DIP (Destination IP address), PT (Protocol Type), and ST (Service Type, i.e. packet type), etc. that characterize the flow that may be monitored for statistics gathering; column 5, line 65 through column 6, line 12 disclose these details; column 1, lines 18-28 disclose a user defined policy (i.e. best effort transmission performance using the maximum available resources for communication in the network)); a second step of extracting a retrieval pattern from received packets when the received packet corresponds to the packet type set in the table (column 2, lines 21-27 which disclose that when an IP packet arrives at the meter 20, the meter checks to see whether the IP packet matches any of the pre-registered communication flow conditions, such as the match between the source and destination IP addresses specified in the packet header and those pre-registered as the conditions of the communication flow; column 6, line 59 through column 7, line 29 describe the types of statistical data gathered); and a third step of storing statistic information of the extracted retrieval pattern when the

extracted retrieval pattern ~~meets~~ **matches** the retrieval pattern set in the table (Fig. 7 that shows saved statistics data 72 being forwarded as a packet from a previous monitoring switch to a next monitoring switch; Fig. 8 shows similar details; column 4, lines 51-67 and column 11, line 29 through column 12, line 62 further disclose the details of the stored statistic information of the extracted retrieval pattern).

However, Mimura et al. do not explicitly disclose a pattern extraction position within a header of a received packet corresponding to the packet type. Although, when the fields corresponding to the retrieval pattern occupy fixed positions in the packet header, the position of the retrieval pattern is implied and not explicitly required, as is the case with Ethernet header.

In the same field of endeavor, Wakayama et al. show and disclose the claimed method, further comprising using a pattern extraction position within a header of a received packet corresponding to the packet type (Fig. 13 which shows the layout of the fields that make up the Ethernet Header, specifically a 1-byte TOS (Type of Service at offset 1 corresponding to packet type), a 1-byte PT (Protocol Type) field at offset 9 from the beginning of the IP header, a 4-byte SIP (Source IP Address) and a 4-byte DIP (Destination IP Address) at offsets 12 and 16 respectively from the beginning of the IP header) with fixed pattern extraction positions (1, 9, 12, and 16 bytes from the beginning of the IP header) and field lengths (1, 1, 4, and 4 bytes for TOS, PT, SIP and DIP addresses). Since these retrieval pattern fields occupy fixed positions in the packet header, the positions of the retrieval pattern fields are implied and not explicitly required.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use pattern extraction positions within a header of a received packet corresponding to the packet type, as taught by Wakayama et al., in the method of Mimura et al., so as to easily locate the position, within the IP header, of the fields that need to be extracted and analyzed.

Consider **claim 2**, and **as applied to claim 1 above**, Mimura et al., as modified by Wakayama et al., disclose the claimed statistical information extraction method, wherein the first step sets in the table whether or not the received packet should be made a learning object (in Wakayama et al. reference, Fig. 10; paragraph 0073 which discloses that the packet processing engine 116 holds a packet counter for adding a number of packets processed by the packet processing engine 116; further disclosing that the packet processing engine increases a value  $P_n$  of the packet counter by 1, then judges whether or not the value  $P_n$  matches a predetermined integer value  $N$  ( $N$  greater than 2); if the value  $P_n$  of the packet counter is equal to  $N$ , the frame for header transfer 35 shown in Fig. 4 will be generated to transfer to the statistics information collecting processor 15, and the value  $P_n$  of the packet counter will be reset, thereby disclosing that every  $N^{\text{th}}$  packet is to be made a learning object), and the second step adds to the table a pattern unable to be retrieved if the received packet is set as the learning object in the table when the pattern is unable to be retrieved (Fig. 10; paragraph 0073 further discloses extracting packet header information and storing it in the header buffer in step 5020, if it is every  $N^{\text{th}}$  packet, which is selected as the

learning object; since such selected packet is not previously stored in the table, the pattern is unable to be retrieved during the table search).

Consider **claim 7**, and **as applied to claim 1 above**, Mimura et al., as modified by Wakayama et al., disclose the claimed statistical information extraction method, wherein the third step counts the retrieved pattern, and makes the count the statistic information (Fig. 4; paragraph 0062 which disclose the details of a Statistics Information Collecting Processor that includes an adder 153 to count number of packets retrieved, and stores the statistics information in the statistics table 154).

Consider **claim 8**, Mimura et al. show and disclose a statistic information extraction device (abstract that describes a packet switch for monitoring and analyzing communication flow across a network, using the packet headers to determine whether the packets belong to a specified packet type, and if so, collect statistics data for the communication flow until the communication flow session has ended; Fig. 1 shows the details of the packet switch), comprising:

a first means setting in a table a packet type (Fig. 1 that shows the details within a monitoring switch, including a flow table 4 that interfaces with a flow identifying unit 3 and a meter 5 used to measure predetermined items such as the number of packets meeting one of the conditions for communication flow identification and retaining statistics data obtained by monitoring; column 2, lines 21-27 teach that when an IP packet arrives at the meter 5, the meter checks to see whether the IP packet matches



any of the pre-registered communication flow conditions; column 4, lines 18-25 further disclose that when a sending-end packet switch receives an IP packet that belongs to a new communication flow (i.e. new IP packet), it identifies what type of the new IP packet it is and determines the monitoring method applied to the identified new IP packet and the items to be measured in accordance with a user policy), and

a retrieval pattern which are selectable in accordance with a user policy (Fig. 7, flow identifier 75 that corresponds to a retrieval pattern and includes SIP (Source IP address), DIP (Destination IP address), PT (Protocol Type), and ST (Service Type, i.e. packet type), etc. that characterize the flow that may be monitored for statistics gathering; column 5, line 65 through column 6, line 12 disclose these details; column 1, lines 18-28 disclose a user defined policy (i.e. best effort transmission performance using the maximum available resources for communication in the network));

a second means extracting a retrieval pattern from received packets when the received packet corresponds to the packet type set in the table (column 2, lines 21-27 which disclose that when an IP packet arrives at the meter 20, the meter checks to see whether the IP packet matches any of the pre-registered communication flow conditions, such as the match between the source and destination IP addresses specified in the packet header and those pre-registered as the conditions of the communication flow; column 6, line 59 through column 7, line 29 describe the types of statistical data gathered); and

a third means storing statistic information of the extracted retrieval pattern when the extracted retrieval pattern ~~meets~~ **matches** the retrieval pattern set in the table (Fig. 7

that shows saved statistics data 72 being forwarded as a packet from a previous monitoring switch to a next monitoring switch; Fig. 8 shows similar details; column 4, lines 51-67 and column 11, line 29 through column 12, line 62 further disclose the details of the stored statistic information of the extracted retrieval pattern).

However, Mimura et al. do not explicitly disclose a pattern extraction position within a header of a received packet corresponding to the packet type. Although, when the fields corresponding to the retrieval pattern occupy fixed positions in the packet header, the position of the retrieval pattern is implied and not explicitly required, as is the case with Ethernet header.

In the same field of endeavor, Wakayama et al. show and disclose the claimed device, further comprising using a pattern extraction position within a header of a received packet corresponding to the packet type (Fig. 13 which shows the layout of the fields that make up the Ethernet Header, specifically a 1-byte TOS (Type of Service at offset 1 corresponding to packet type), a 1-byte PT (Protocol Type) field at offset 9 from the beginning of the IP header, a 4-byte SIP (Source IP Address) and a 4-byte DIP (Destination IP Address) at offsets 12 and 16 respectively from the beginning of the IP header) with fixed pattern extraction positions (1, 9, 12, and 16 bytes from the beginning of the IP header) and field lengths (1, 1, 4, and 4 bytes for TOS, PT, SIP and DIP addresses). Since these retrieval pattern fields occupy fixed positions in the packet header, the positions of the retrieval pattern fields are implied and not explicitly required.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use pattern extraction positions within a header of a

received packet corresponding to the packet type, as taught by Wakayama et al., in the device of Mimura et al., so as to easily locate the position, within the IP header, of the fields that need to be extracted and analyzed.

Consider **claim 9**, and **as applied to claim 8 above**, Mimura et al., as modified by Wakayama et al., disclose the claimed statistical information extraction device, wherein the first means sets in the table whether or not the received packet should be made a learning object (in Wakayama et al. reference, Fig. 10; paragraph 0073 which discloses that the packet processing engine 116 holds a packet counter for adding a number of packets processed by the packet processing engine 116; further disclosing that the packet processing engine increases a value  $P_n$  of the packet counter by 1, then judges whether or not the value  $P_n$  matches a predetermined integer value  $N$  ( $N$  greater than 2); if the value  $P_n$  of the packet counter is equal to  $N$ , the frame for header transfer 35 shown in Fig. 4 will be generated to transfer to the statistics information collecting processor 15, and the value  $P_n$  of the packet counter will be reset, thereby disclosing that every  $N^{\text{th}}$  packet is to be made a learning object), and the second means adds to the table a pattern unable to be retrieved if the received packet is set as the learning object in the table when the pattern is unable to be retrieved (in Wakayama et al. reference, Fig. 10; paragraph 0073 further discloses extracting packet header information and storing it in the header buffer in step 5020, if it is every  $N^{\text{th}}$  packet, which is selected as the learning object; since such selected packet

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is not previously stored in the table, the pattern is unable to be retrieved during the table search).

Consider **claim 14**, and **as applied to claim 8 above**, Mimura et al., as modified by Wakayama et al., disclose the claimed statistical information extraction device, wherein the third means counts the retrieved pattern, and makes the count the statistic information (in Wakayama et al. reference, Fig. 4; paragraph 0062 which disclose the details of a Statistics Information Collecting Processor that includes an adder 153 to count number of packets retrieved, and stores the statistics information in the statistics table 154).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 7-9, and 14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Art Unit: 2443

**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kishin G. Belani whose telephone number is (571) 270-1768. The Examiner can normally be reached on Monday-Friday from 6:00 am to 5:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tonia Dollinger can be reached on (571) 272-4170. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

/K. G. B./  
Examiner, Art Unit 2443

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September 29, 2010

/George C Neurauder, Jr./

Primary Examiner, Art Unit 2443